

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

UNITED STATES OF AMERICA,)	
)	
PLAINTIFF,)	CASE NO. 2:20-CR-18
)	
vs.)	
)	
DEWAYNE FOSTER,)	
)	
DEFENDANT.)	
)	

TRANSCRIPT OF PLEA PROCEEDINGS
VIA VIDEO CONFERENCE
BEFORE THE HONORABLE NORAH MCCANN KING
UNITED STATES DISTRICT MAGISTRATE JUDGE
FEBRUARY 3, 2021; 3:30 P.M.
COLUMBUS, OHIO

APPEARANCES:

FOR THE PLAINTIFF:

VIPAL J. PATEL
Acting United States Attorney
By: TIMOTHY LANDRY
Assistant United States Attorney
303 Marconi Boulevard
Columbus, Ohio 43215

FOR THE DEFENDANT:

Kevin Durkin, Attorney at Law
By: KEVIN P. DURKIN, ESQ.
50 West Broad Street
Columbus, Ohio 43215

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Proceedings recorded by mechanical stenography,
transcript produced by computer.

WEDNESDAY AFTERNOON SESSION

FEBRUARY 3, 2021

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THE DEPUTY CLERK: The Honorable Norah McCann King, Magistrate Judge, for the Southern District of Ohio. This is a change of plea hearing, Case No. 2:20-CR-18, the United States of America versus Dewayne Foster. Today's date is February the 3rd, 2021.

THE COURT: Thank you. And for the record, I'm pleased to recognize Mr. Timothy Landry who is participating on behalf of the United States. And we have on the telephone line Mr. Kevin Durkin who is counsel for the defendant Dewayne Foster.

And I gather, Mr. Durkin, you're having some technical problems that prevent you from using a camera connection as well?

MR. DURKIN: Your Honor, I'm hoping that that will get resolved as we speak. But I can see all the parties -- well, I could. Wait a minute here.

THE COURT: There we go. We can see you now.

MR. DURKIN: Great.

THE COURT: Now we can.

And you are Dewayne Foster; is that correct?

THE DEFENDANT: Correct.

THE COURT: Well, Mr. Foster, as is apparent, we're

1 participating so far by video conference with more or less
2 success. But I want to make sure you understand that you have
3 a right to participate in person in the courtroom.

4 I think we're -- I'm having some difficulty seeing.

5 MR. DURKIN: I'm seeing like six images.

6 THE COURT: Yes. I don't know what has happened here.

7 Are other people having a strange screen?

8 MR. LANDRY: Yes. It says at the bottom Kevin Durkin
9 is presenting.

10 Mr. Durkin, I think there is a button that allows you to
11 share your screen. Did you hit something?

12 MR. DURKIN: It is quite possible. Let me go back.

13 Did that help?

14 THE COURT: Mr. Harris, would it be possible or best
15 for all of us to back out of this GoToMeeting and come back on
16 and start afresh?

17 I don't know -- Mr. Foster, are you able to set up the
18 laptop?

19 THE DEFENDANT: No. No.

20 THE DEPUTY CLERK: I can try this. I can take Kevin
21 Durkin off and see if that helps, and then he'll have to call
22 back in.

23 MR. DURKIN: It can only help.

24 THE COURT: Okay. Thank you.

25 THE DEPUTY CLERK: That's what I will try.

1 MR. DURKIN: Did that fix the screen, Judge?

2 THE COURT: No.

3 MR. DURKIN: I have completely backed out of the
4 meeting except for audio.

5 THE COURT: I think we're going to have to terminate
6 this hearing and start over. And I don't know how -- have we
7 got a deputy marshal listening in?

8 DEPUTY MARSHAL: Yes, ma'am.

9 THE COURT: If we have everyone close down this
10 meeting and start over, will Mr. Foster be able to close down
11 and then reconnect to GoToMeeting?

12 DEPUTY MARSHAL: I can have a deputy come down there,
13 or a CO come down and reconnect him.

14 THE COURT: I think that's probably the best way to do
15 it at this point. I think all of the rest of us are flummoxed
16 as to how to correct the screen. So, if you wouldn't mind
17 making those arrangements down at Jackson Pike, and then I'll
18 ask everyone else to leave the meeting and we'll start over.

19 MR. DURKIN: All right, Your Honor. I apologize if
20 I'm the one responsible for this. I'm not even smart enough to
21 know if I did it wrong. I apologize in any case, and I'll get
22 off now.

23 THE COURT: All right. Thank you. And I'm going to
24 leave the meeting as well.

25 (Recess taken from 3:42 p.m. to 3:44 p.m.)

1 THE COURT: Mr. Harris, can I ask you to call the case
2 again, please? We'll start over.

3 THE DEPUTY CLERK: The Honorable Norah McCann King,
4 Magistrate Judge, for the Southern District of Ohio. This is a
5 change of plea hearing, Case No. 2:20-CR-18, the United States
6 of America verses Dwayne Foster. Today's date is February the
7 3rd, 2021.

8 THE COURT: Thank you.

9 So just to make this record clear and complete, I'm
10 pleased to recognize Mr. Timothy Landry who is participating on
11 behalf of the United States, and Mr. Kevin Durkin who is
12 participating on behalf of Mr. Foster who is also available to
13 us by video conference.

14 Mr. Foster, I wanted to make sure that you knew that you
15 had a right to participate in this hearing in person and in the
16 courtroom with your attorney. But if after you've had a chance
17 to discuss the matter with your attorney, you decide that it's
18 better to go forward by video conference, that's what we'll do.

19 Now, have you discussed this issue with Mr. Durkin?

20 THE DEFENDANT: Yes, Judge.

21 THE COURT: Okay. And the file does reflect your
22 consent to conduct this hearing by video conference. Are you
23 agreeable with going forward by video conference?

24 THE DEFENDANT: Yes.

25 THE COURT: Okay.

1 Mr. Durkin, you did confer with Mr. Foster in making
2 that decision?

3 MR. DURKIN: I did, Your Honor. With the Court's
4 assistance, we spoke after the last hearing was continued for
5 about an hour.

6 THE COURT: Okay. Well, thanks.

7 So, Mr. Foster, we will go forward by video conference.
8 If at any time you can't see or hear any of the participants,
9 raise your hand. You'll get my attention, and we'll do our
10 best to solve the problem. And if at any time you want to
11 speak privately to Mr. Durkin, again, get my attention and
12 we'll make arrangements for you to speak privately with
13 Mr. Durkin. Okay?

14 THE DEFENDANT: Okay.

15 THE COURT: Well, it is -- well, before we get to the
16 actual change of plea proceeding, Mr. Landry, have all victims
17 been notified of this hearing? And are you aware of the
18 request of any victims to participate or to observe this
19 hearing?

20 MR. LANDRY: Your Honor, no victims are participating
21 or have asked to participate today.

22 THE COURT: All right. But so far as you know, have
23 they been notified?

24 MR. LANDRY: Yes. Yes. My office is on that.

25 THE COURT: All right. Thank you.

1 Mr. Foster, it's anticipated that you're going to plead
2 not guilty to Count 2 of the indictment pursuant to a plea
3 agreement.

4 Now, as I'm sure you know, this case is assigned to
5 Judge Graham, and it is only Judge Graham who can make a final
6 decision in this case, including deciding whether or not to
7 accept your guilty plea pursuant to this plea agreement. But,
8 if you want to proceed in front of me on a guilty plea, we can
9 do that. But I can only make a recommendation to Judge Graham.
10 I cannot make a final decision.

11 Now, have you discussed this issue with Mr. Durkin?

12 THE DEFENDANT: Yes.

13 THE COURT: And I do note, again, that the file
14 reflects your agreement to plead guilty before a magistrate
15 judge. Are you agreeable to going forward in front of me here
16 today knowing that the most I can do is make a recommendation?

17 THE DEFENDANT: Yes.

18 THE COURT: Okay. Well, we will go forward, and I
19 expect to make a recommendation to Judge Graham yet today.

20 Now, before any judge can accept a guilty plea, the
21 judge has to be satisfied that the plea is made knowingly and
22 voluntarily and with a full understanding of the consequences
23 of that plea. In order to make that determination for myself
24 and to allow Judge Graham to make his own determination in that
25 regard, I'm going to be asking you a number of questions. And

1 you're going to be placed under oath. That means that your
2 answers to my questions will be made under penalty of perjury.

3 And should you intentionally make a false statement in
4 response to my questions, you could be charged with another
5 criminal offense such as perjury or making false statements.

6 Do you understand?

7 THE DEFENDANT: Yes.

8 THE COURT: Okay. I'm going to ask you to raise your
9 right hand, and I'll ask our courtroom deputy to administer the
10 oath.

11 (Defendant sworn.)

12 THE DEFENDANT: Yes.

13 THE COURT: How old are you, Mr. Foster?

14 THE DEFENDANT: Thirty-eight.

15 THE COURT: And where were you born?

16 THE DEFENDANT: What did you say, ma'am?

17 THE COURT: Where were you born?

18 THE DEFENDANT: Lima, Ohio.

19 THE COURT: And I should have asked you first: What's
20 your full name?

21 THE DEFENDANT: Dewayne Minard Foster.

22 THE COURT: And how much education do you have?

23 THE DEFENDANT: I completed the 12th grade and some
24 college.

25 THE COURT: Okay. Have you ever been treated for a

1 mental illness or an addiction of any kind?

2 THE DEFENDANT: No.

3 THE COURT: Do you have any medical condition, whether
4 it's physical or mental, that requires treatment?

5 THE DEFENDANT: No.

6 THE COURT: Within the past 24 hours, have you taken
7 any drugs, pills, narcotics, or alcohol?

8 THE DEFENDANT: No.

9 THE COURT: All right.

10 Mr. Durkin, do you have any doubt as to Mr. Foster's
11 competence to enter a plea at this time?

12 MR. DURKIN: I don't, Your Honor.

13 THE COURT: Okay. Well, Mr. Foster, as you know, the
14 indictment charges you with six counts of making false
15 representation of a Social Security number. And each count
16 refers to events that are alleged to have occurred on separate
17 dates in 2018 and 2019. And it is alleged that each of these
18 offenses violated Title 42 of the United States Code Section
19 408.

20 Now, do you understand the nature and meaning of those
21 charges?

22 THE DEFENDANT: Yes.

23 THE COURT: Have you told Mr. Durkin everything you
24 know about this case?

25 THE DEFENDANT: Yes.

1 THE COURT: Do you believe that Mr. Durkin knows all
2 the facts and circumstances on which these charges are based?

3 THE DEFENDANT: Yes.

4 THE COURT: Has Mr. Durkin fully advised you as to the
5 nature and meaning of these charges and any defense that you
6 might have to these charges?

7 THE DEFENDANT: Yes.

8 THE COURT: Are you satisfied with Mr. Durkin's advice
9 and representation?

10 THE DEFENDANT: Yes.

11 THE COURT: Now, it's anticipated that you will plead
12 guilty to Count 2 of the indictment. Every criminal offense
13 has certain basic facts or essential elements that the
14 government would be required to prove beyond a reasonable doubt
15 before a person could be convicted on that charge at trial.

16 Now, in this case, as it relates to Count 2, the
17 government would have to prove these facts beyond a reasonable
18 doubt.

19 First, the government would have to prove that you made
20 a false representation of a Social Security account number.
21 And the government would have to prove that you did this with
22 the intent to deceive.

23 Third, the government would have to establish that this
24 action was taken by you with this intent for any purpose. The
25 government would also have to establish that this offense

1 occurred, at least in part, in the Southern District of Ohio on
2 or about the date alleged in the indictment. And as to Count
3 2, the indictment refers to the day of January 25, 2019.

4 Now, do you understand that that's what the government
5 would have to prove beyond a reasonable doubt before you could
6 be convicted on Count 2 at trial?

7 THE DEFENDANT: Yes.

8 THE COURT: Now, if Judge Graham accepts your guilty
9 plea pursuant to this plea agreement, he will impose the
10 sentence that you and the government agreed to in the plea
11 agreement, and that is a term of imprisonment ranging from 33
12 to 41 months, a term of supervised release if at all as
13 determined by Judge Graham, a fine if at all as determined by
14 Judge Graham, a one hundred dollar special assessment; and that
15 would be with the understanding that the sentence imposed by
16 Judge Graham in this case could be imposed either concurrently
17 or consecutively to a state court sentence that -- I'm not sure
18 what the status of that state court sentence is, but apparently
19 there is a state court sentence ongoing.

20 So I want to emphasize, if Judge Graham accepts your
21 guilty plea pursuant to this plea agreement, he will impose a
22 sentence that is consistent with what you've agreed to in the
23 plea agreement.

24 If he does not accept the plea agreement after he's
25 reviewed the presentence report, you'll be given notice of that

1 and you will be allowed to withdraw your guilty plea. But, if
2 you do not withdraw your guilty plea under those circumstances,
3 then Judge Graham could impose a sentence that is more severe
4 than the sentence that you and the government agreed to in the
5 plea agreement up to the statutory maximum sentence.

6 And that statutory maximum sentence for conviction on
7 Count 2 is a term of imprisonment of up to five years. And any
8 term of imprisonment could be followed by a term of supervised
9 release of up to three years. The statute authorizes a maximum
10 fine of up to \$250,000, requires the payment of a one hundred
11 dollar special assessment, and also requires an order of
12 restitution by which the -- any victim or victims of an offense
13 are paid in order to compensate them for any loss or damage
14 suffered by the victim or victims as a result of the offense.

15 So, as I say -- and I'm going to repeat this several
16 times probably, and that is that if Judge Graham accepts your
17 guilty plea pursuant to this plea agreement, he will impose a
18 sentence that is consistent with what you and the government
19 have agreed to in the plea agreement. But, if he rejects the
20 plea agreement and you decide not to withdraw your guilty plea
21 under those circumstances, he could impose a sentence that is
22 more severe than the one that you agreed to in the plea
23 agreement up to that statutory maximum.

24 Do you understand that?

25 THE DEFENDANT: Yes.

1 THE COURT: Okay. Now, let's talk a little bit about
2 possible sentencing terms in this case. Do you understand that
3 this offense is a felony offense, and that if your guilty plea
4 is accepted, this could deprive you of valuable civil rights as
5 a citizen of the United States such as the right to vote, the
6 right to hold public office, the right to serve on a jury, and
7 the right to possess a firearm. Do you understand that?

8 THE DEFENDANT: Yes.

9 THE COURT: I told you that a term of imprisonment
10 could be followed by a term of supervised release of up to
11 three years in this case. Now, supervised release is a period
12 of supervision by the probation office on terms and conditions
13 established by the Court. It begins after the completion of
14 any term of imprisonment. And a violation of terms of
15 supervised release could result in a new, additional period of
16 imprisonment for up to the full term of supervised release and
17 without credit for time already served in prison or on
18 supervised release.

19 Moreover, if supervised release is revoked and a new
20 term of imprisonment is imposed, that new term of imprisonment
21 could also be followed by yet a new term of supervised release.

22 Do you understand that?

23 THE DEFENDANT: Yes.

24 THE COURT: Now, in determining whether or not to
25 accept this plea agreement and determining what an appropriate

1 sentence would be in a case, Judge Graham will be considering
2 the sentencing guidelines. Now, those are intended to help a
3 federal judge in determining an appropriate sentence in a case.
4 And although the sentencing guidelines are not binding on a
5 federal judge, federal judges, including Judge Graham, must
6 consider those guidelines, as well as departures or variances
7 from those guidelines, as among the many factors that judges
8 must consider in determining an appropriate sentence in a case.

9 Now, have you and Mr. Durkin talked about how the
10 sentencing commission guidelines might apply to your case?

11 THE DEFENDANT: Yes.

12 THE COURT: Do you understand that Judge Graham will
13 not be able to determine what guideline applies to your case
14 until after the presentence report has been completed and after
15 you and the government have had the opportunity to object to
16 the findings and conclusions of the probation officer in the
17 presentence report? Do you understand that?

18 THE DEFENDANT: Yes.

19 THE COURT: Now, I know that in the plea agreement you
20 and the government have agreed to certain facts relevant to the
21 application of the guidelines. But do you understand that
22 Judge Graham is not bound by those facts? Instead, he will
23 determine for himself, with the aid of the presentence report,
24 what facts are relevant to the application of the guidelines
25 and, in this case, to whether or not he accepts this plea

1 agreement and to your sentence. Do you understand that?

2 THE DEFENDANT: Yes.

3 THE COURT: Again, I want to emphasize that if, after
4 he's reviewed the presentence report, he decides to accept the
5 plea agreement and the sentencing terms that you've agreed to
6 with the government in the plea agreement, he will impose a
7 sentence that is consistent with what you've agreed to.

8 But if after reviewing the presentence report, he
9 rejects the plea agreement, you'll be allowed to withdraw your
10 guilty plea. But if you decide not to withdraw your guilty
11 plea under those circumstances, he could impose a sentence that
12 is more severe than the sentence you agreed to in the plea
13 agreement up to the statutory maximum but after having
14 considered the sentencing guidelines as well as other factors.
15 Okay?

16 THE DEFENDANT: Yes.

17 THE COURT: You understand that?

18 Okay. Now, moreover, if Judge Graham accepts your
19 guilty plea pursuant to this plea agreement, it also means that
20 you will have given up your right to appeal from or to
21 collaterally challenge your conviction and sentence under
22 almost all circumstances. This plea agreement would permit an
23 appeal from or a challenge to your conviction and sentence only
24 if the sentence that Judge Graham imposes is greater than that
25 statutory maximum sentence I told you about.

1 Now, you always retain the right to appeal from or to
2 challenge your conviction and sentence if the claim you want to
3 pursue is a claim of ineffective assistance of your attorney or
4 misconduct on the part of the prosecutor.

5 But apart from those very limited claims, this plea
6 agreement does not permit an appeal or a challenge to your
7 conviction and sentence.

8 Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Okay. Now, under the Constitution and
11 laws of the United States, you have the right to persist in
12 your plea of not guilty to each of these six counts in the
13 indictment. You have the right to be tried by a jury. And at
14 a speedy and public trial, you would have the right to the
15 assistance of counsel. You would have the right to present a
16 defense and to present evidence in support of that defense if
17 you choose to do so.

18 You would have the right to confront and cross-examine
19 the witnesses who testify against you. You would have the
20 right to require the attendance of witnesses to testify for
21 you. You would have the right to testify yourself in your own
22 defense if you choose to do so. You would also have the right
23 to remain silent at trial without any penalty whatsoever. And
24 at a trial, you would be presumed innocent unless and until the
25 government establishes your guilt by admissible evidence beyond

1 a reasonable doubt.

2 Now, do you understand that if you plead guilty you give
3 up all of those trial rights?

4 THE DEFENDANT: Yes.

5 THE COURT: Do you understand that if you plead
6 guilty, there will be no trial of any kind in your case
7 because, by pleading guilty, you are giving up your right to
8 trial? Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: Do you understand that if you plead
11 guilty, you will also have to give up your right not to
12 incriminate yourself because you will have to admit your guilt
13 to Count 2 of the indictment? Do you understand that,
14 Mr. Foster?

15 THE DEFENDANT: Yes.

16 THE COURT: Are you willing to give up all of these
17 trial rights that I just mentioned to you?

18 THE DEFENDANT: Yes, Judge.

19 THE COURT: Now, we've talked a little bit about the
20 plea agreement in this case. Plea agreements are perfectly
21 proper, but you and the attorneys in this case must disclose
22 all of the terms of the plea agreement.

23 Mr. Landry, can I ask you to summarize those terms?

24 MR. LANDRY: Yes, Your Honor.

25 The plea agreement is docketed as Document No. 19 in the

1 ECF system. It's an agreement pursuant to Rule 11(c)(1)(C).

2 Paragraph 1, the defendant agrees to plead guilty to Count 2 of
3 the indictment pending against him and admits that he is in
4 fact guilty of that offense.

5 Paragraph 2 lists the elements of the offense which the
6 Court reviewed a few minutes ago with the defendant.

7 Paragraph 3 lists the maximum penalties which the Court
8 also reviewed just a few minutes ago with the defendant.

9 In paragraph 4, the defendant acknowledges and waives
10 his trial rights which the Court also reviewed just a moment
11 ago in some detail.

12 In paragraph 5, the defendant waives his right to remain
13 silent and acknowledges that his statements can be used against
14 him.

15 In paragraph 6, the defendant acknowledges that the
16 Court must consult the federal sentencing guidelines and
17 statutory factors when determining a sentence.

18 In paragraph 7, the parties agree to the statement of
19 facts that is attached to the plea agreement. They also agree
20 on a guideline calculation which is simply a base offense level
21 of 6, plus 10 levels worth of enhancements for a total of 16.
22 And then the U.S. Attorney's Office does not oppose a two-level
23 reduction for acceptance of responsibility, and there's the
24 potential for even a third level to be reduced for acceptance
25 of responsibility as well. The parties agree that the

1 defendant's criminal history category is 6.

2 Also in paragraph 7, Your Honor, the parties agree on a
3 sentencing disposition which I know the Court reviewed in some
4 detail just a few minutes ago, but probably the most
5 significant portion of which is a prison term of 33 to 41
6 months.

7 In paragraph 8, the defendant agrees to pay restitution
8 in an amount to be determined at sentencing but not to exceed
9 \$34,204.

10 In paragraph 9, the United States Attorney's Office
11 agrees it will not further prosecute the defendant for conduct
12 prior to the date of the plea agreement that was part of the
13 same course of criminal conduct described in the indictment and
14 that was known to the U.S. Attorney's Office when the plea
15 agreement was signed. The U.S. Attorney's Office also agrees
16 to the dismissal of any remaining counts of the indictment
17 against the defendant at the entry of final judgment.

18 Paragraph 10 is the waiver of appeal which the Court
19 just reviewed in detail with the defendant a moment ago.

20 In paragraph 11, the defendant waives his rights under
21 the Freedom of Information Act.

22 In paragraph 12, the defendant acknowledges that the
23 Court may accept or reject this plea agreement, or defer a
24 decision until the Court has reviewed the Presentence
25 Investigation Report.

1 Paragraph 13, the defendant -- excuse me. In paragraph
2 13, there are certain consequences listed in the event the
3 defendant should violate the plea agreement.

4 Paragraph 14, the defendant acknowledges that he has
5 read and that he understands the plea agreement. He's entering
6 into it knowingly and voluntarily, and he's fully satisfied
7 with his attorney's representation.

8 Paragraph No. 15 is the final numbered paragraph of the
9 agreement, and it states that this agreement, along with any
10 attachments, is the complete agreement between the parties.

11 The document is then signed by myself on behalf of the
12 United States and Mr. Foster and by Mr. Durkin.

13 THE COURT: Mr. Durkin, is that your understanding of
14 the plea agreement in this case?

15 MR. DURKIN: It is, Your Honor.

16 THE COURT: And have all formal plea offers been
17 communicated to Mr. Foster?

18 MR. DURKIN: They have.

19 THE COURT: Mr. Foster, did you understand that
20 summary of the plea agreement provided by the attorney for the
21 United States?

22 THE DEFENDANT: Yes.

23 THE COURT: And I know you probably don't have a copy
24 of the plea agreement in front of you, but I have a copy and it
25 appears to have been signed. Do you remember signing the plea

1 agreement?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: Before you signed it, had you read the
4 entire plea agreement?

5 THE DEFENDANT: Yes.

6 THE COURT: Had you discussed it with Mr. Durkin
7 before you signed it?

8 THE DEFENDANT: Yes.

9 THE COURT: And did you understand all of the terms of
10 the plea agreement before you signed it?

11 THE DEFENDANT: Yes.

12 THE COURT: And do you agree with all of those terms?

13 THE DEFENDANT: Yes.

14 THE COURT: Has anyone made any other or different
15 promises or assurances of any kind to persuade you to plead
16 guilty in this case?

17 THE DEFENDANT: No.

18 THE COURT: Have you been subjected to threats or
19 force of any kind that persuade you to plead guilty?

20 THE DEFENDANT: No, Your Honor.

21 THE COURT: Is your decision to plead guilty to Count
22 2 your own free and voluntary act?

23 THE DEFENDANT: Yes.

24 THE COURT: All right. Well, decision on whether or
25 not to accept the plea agreement is of course left for Judge

1 Graham's consideration.

2 But now Judge Graham is also going to have to determine
3 that there is a factual basis for your plea of guilty to Count
4 2. And there is a statement of facts attached to the plea
5 agreement. Again, it appears to have been signed. Do you
6 remember signing that statement of facts?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Before you signed it, had you read the
9 statement of facts?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Had you discussed it with Mr. Durkin
12 before you signed it?

13 THE DEFENDANT: Yes.

14 THE COURT: And before you signed it, did you
15 understand all of that statement of facts?

16 THE DEFENDANT: Yes.

17 THE COURT: Do you agree with that statement of facts?

18 THE DEFENDANT: Yes.

19 THE COURT: Is it correct?

20 THE DEFENDANT: Yes.

21 THE COURT: Are you offering to plead guilty to Count
22 2 because you are in fact guilty of the crime charged in Count
23 2 of the indictment?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: All right. Then, in light of everything

1 I've told you about your rights, Mr. Foster, and in light of
2 all of my questions, let me ask you: How do you now plead to
3 Count 2 of the indictment?

4 THE DEFENDANT: Guilty.

5 THE COURT: All right. Your guilty plea has been
6 recorded. I've had a chance to evaluate your appearance and
7 responsiveness in response to my questions. And based on my
8 observation and your answers to my questions, I will recommend
9 to Judge Graham that your guilty plea be accepted.

10 I expect to make that recommendation today. The parties
11 will have 14 days to object, and their failure to object may
12 result in a waiver of the right to appeal the adoption of the
13 recommendation by Judge Graham.

14 Now, Mr. Durkin, is there any objection to beginning the
15 preparation of the presentence report in advance of Judge
16 Graham's action on the recommendation?

17 MR. DURKIN: No, Your Honor. I've already talked with
18 probation, and we'll schedule a -- probably we'll have a
19 presentence interview next week. And I expect Mr. Foster and I
20 will talk about this case on the telephone before that video
21 interview with the probation department.

22 THE COURT: I think you cut out just a little bit
23 there in that statement, Mr. Durkin. You expect to have an
24 interview?

25 MR. DURKIN: I think we will probably have it Tuesday

1 of next week. And I expect I'll talk to Mr. Foster before then
2 by telephone so that we're prepared for that interview.

3 THE COURT: Okay. Thank you.

4 Well, Mr. Foster during that process, you're going to be
5 asked to provide information relevant to the presentence
6 report. And Mr. Durkin can assist you throughout that process.
7 You'll have an opportunity, in consultation with Mr. Durkin, to
8 review the presentence report and to object to any of the
9 findings or conclusions with which you disagree. And if
10 there's still some unresolved objections at the time of
11 sentencing, you'll have the right through Mr. Durkin to present
12 evidence or arguments addressing those unresolved objections.

13 Now, the defendant was previously ordered detained in
14 the custody of the marshal pending these proceedings, and he
15 does remain in custody.

16 Mr. Landry, is there anything further on behalf of the
17 United States?

18 MR. LANDRY: No. Thank you, Your Honor.

19 THE COURT: Mr. Durkin, anything further on behalf of
20 Mr. Foster?

21 MR. DURKIN: No. Just again thank the Court for its
22 patience.

23 THE COURT: Well, with that, then, I'll ask the clerk
24 to adjourn the court, please.

25 (Proceedings concluded at 4:13 p.m.)

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C E R T I F I C A T E

I, Shawna J. Evans, do hereby certify that the foregoing is a true and correct transcript of the proceedings before the Honorable Norah McCann King, Magistrate Judge, in the United States District Court, Southern District of Ohio, Eastern Division, on the date indicated, reported by me in shorthand and transcribed by me or under my supervision.

s/Shawna J. Evans
Shawna J. Evans, RMR, CRR
Official Federal Court Reporter

September 9, 2021